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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 780,224	02 09 2001	Petrus W. Roelvink	208859	6994

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LEYDIG VOIT & MAYER, LTD  
TWO PRUDENTIAL PLAZA, SUITE 4900  
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EXAMINER

GUZO, DAVID

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 01 03 2002

69

Please find below and/or attached an Office communication concerning this application or proceeding.

<p style="text-align: center;"><b>Office Action Summary</b></p>	<p><b>Application No.</b> 09/780 224</p> <p><b>Examiner</b> David Guzo</p>	<p><b>Applicant(s)</b> ROELVINK ET AL</p> <p><b>Art Unit</b> 1636</p>
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**DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTER STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.
- If the period specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to file a reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply filed in the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned right to priority. See 37 CFR 1.704(b).

**Status**

1) ☐ This communication(s) filed on \_\_\_\_\_.

2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is continued in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition**

4) ☐ Claims                      is/are pending in the application.

4a) ☐ The                      independent claim(s)                      is/are withdrawn from consideration.

5) ☐ Claims                      is/are allowed.

6) ☐ Claims 9, 11, 12, 17-19, 29-32 and 34-40 is/are rejected.

7) ☐ Claims 6, 10, 13-16, 20-28 and 33 is/are objected to.

8) ☐ Claims                      are subject to restriction and/or election requirement.

**Application**

9) ☐ The                      drawing is objected to by the Examiner.

10) ☐ The                      filed on                      is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.   
The Examiner does not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The                      drawing correction filed on                      is: a) ☐ approved b) ☐ disapproved by the Examiner.   
Corrected drawings are required in reply to this Office action.

12) ☐ The                      variation is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ A claim is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).   
a) ☐ Yes      b) ☐ None of:   
1) ☐ Certified copies of the priority documents have been received.   
2) ☐ Certified copies of the priority documents have been received in Application No.                     .   
3) ☐ Certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).   
\* See detailed Office action for a list of the certified copies not received.

14) ☐ A claim is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application):   
a) ☐ Yes      b) ☐ No      c) ☐ Provisional application has been received.

15) ☐ A claim is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment**

1) ☐ None      2) ☐ PTO-322      3) ☐ Interview Summary (PTO-413) Paper No(s)                           4) ☐ Notice of Informal Patent Application (PTO-32)      5) ☐ Other                     

6) ☐ Patent Drawing Review (PTO-948)      7) ☐ Statement of PTO-1449 (Paper No(s) 7, 8)

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*John Adams*

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 9, 11, 12, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lutz et al.

Applicants and Lutz et al. (Cited by applicants, J. Virol., 1997, Vol. 71, No. 7, pp. 5102-5109, see whole article, particularly the "Materials and Methods" section and Fig. 7) both recite chimeric adenovirus pIX proteins (and nucleic acids encoding said proteins) comprising at least one adenoviral pIX protein domain (or the full length pIX protein) and a non-native amino acid sequence (which can be an antigen such as GST protein and which constitutes the N-terminus of the chimeric protein). Applicants and Lutz et al. also recite a chimeric pIX protein wherein at least one domain consists essentially of an adenoviral pIX protein truncated at the N-terminus. Lutz et al. therefore teaches the claimed invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 5, 18, 19, 29, 30, 31, 32, 34-40 are rejected under 35 U.S.C. 102(a) as being anticipated by Romanczuk et al.

Applicants and Romanczuk et al. (Cited by applicants, WO 99/36545, Publication date 7/22/99, see whole article, particularly pp. 7, 10, 14-15, Claims 1-51) both recite chimeric pIX proteins comprising ligands which comprise an RGD sequence or a polylysine containing sequence which can bind to a substrate present on a cell surface, nucleic acids encoding said proteins, an adenoviral capsid containing chimeric pIX proteins, a composition of matter comprising said capsids and a nucleic acid or liposome, an adenoviral vector comprising said capsids and an adenoviral genome (which can be replication incompetent) and a transgene which is under transcriptional control of non-adenoviral promoters which can be regulatable or tissue specific and methods of infecting cells comprising contacting said cells with the vector. Romanczuk et al. therefore teaches the claimed invention.

Miscellaneous:

Claim 4 does not end with a period. Correction is required.

No Claims are allowed.

Claims 4, 6-8, 10, 13-16, 20-28 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The above objected to claims are free of the art. The closest prior art is the Lutz et al. reference and the Romanczuk et al. reference (cited above). Neither reference teaches or suggests the claim limitations in the objected to claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Guzo whose telephone number is (703) 308-1906. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Elliott, can be reached on (703) 308-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242. Responses can be faxed directly to the examiner at (703) 746-5061.

Any inquiry of a general nature or relating to the status of this application or proceeding or relating to attachments to this Office Action should be directed to Patent Analyst Zeta Adams whose telephone number is (703) 305-3291.

David Guzo  
December 27, 2001

DAVID GUZO  
PRIMARY EXAMINER  
*David Guzo*